



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

In re:

ALICE MARIE RICHARDS

Debtor

Case No.: 8:21-bk-10635-SC

Chapter: 7

MEMORANDUM OF DECISION
RE: MOTION TO RECUSE HON.
SCOTT C. CLARKSON AND
REQUEST FOR STAY OF
PROCEEDINGS

Date: May 17, 2023

Time: 11:00 a.m.

Ctrm: 5B

This is the motion of debtor, Alicia Marie Richards (“Debtor”) to recuse Judge Scott C. Clarkson, and for a stay of further proceedings. Judge Clarkson could have resolved the motion himself, as he had done before. But instead to maintain all appearances of propriety the motion was reassigned to the undersigned for resolution. The motion is opposed by the chapter 7 trustee, Richard Marshack (“Trustee”). Debtor, as was her right, filed this motion apparently without assistance of counsel, but this has made a concise timeline and deciphering the nature of some

1 of the allegations, difficult. Nevertheless, the court believes the following is an
2 accurate synopsis:

3 4 **1. Background**

5 On March 12, 2021, Debtor filed a voluntary Chapter 7 petition initiating this
6 case. Originally, this case was before the Hon. Erithe Smith, who had presided over
7 Debtor's prior chapter 13 case. Upon Judge Smith's retirement, the case was
8 reassigned to Judge Clarkson on September 1, 2022.

9 On September 6, 2022, Debtor filed a motion to recuse Judge Clarkson based,
10 at least in part, on remarks allegedly made by Judge Clarkson suggesting that Debtor
11 was venue shopping and causing undue delay. Trustee opposed that motion as well.
12 Judge Clarkson issued a detailed order finding Debtor's motion meritless and so
13 denying it on September 14, 2022.

14 On November 21, 2022, Judge Clarkson issued a turnover order based upon
15 Debtor's lapsed homestead exemption pursuant to *Wolfe v. Jacobson (In re*
16 *Jacobson)*, 676 F.3d 1193, 1198-99 (9th Cir. 2012). In *Jacobson*, the Ninth Circuit
17 noted, citing Cal. Civ. Proc. Code §704.720(b), that "[i]f the debtor does not
18 reinvest his proceeds in a new homestead within six months of receipt, they lose
19 their exempt status." *Id.* In this case, Debtor received a check from Trustee for
20 \$300,000 representing a portion of homestead sales proceeds. Judge Clarkson found
21 that Debtor failed to timely reinvest these funds, and, therefore, held that the funds
22 lost their exempt status. Consequently, Judge Clarkson ordered the \$300,000 in
23 lapsed homestead exemption funds to be returned to the estate. Debtor did not
24 comply with that order.

25 On January 12, 2023, Judge Clarkson issued an order finding Debtor in civil
26 contempt stemming from Debtor's willful failure to comply with the court's
27 turnover order, failure to account for the proceeds and requiring her incarceration
28 pending compliance (or proof of impossibility). Debtor remains incarcerated under

1 that order. It should be noted that prior to Judge Clarkson's contempt order, Judge
2 Smith had also issued a contempt order against Debtor for failing to comply with a
3 different turnover order. (See dkt. #554); but reportedly that contempt order was
4 later withdrawn.

5 Debtor filed the present motion to recuse Judge Clarkson on April 20, 2023.
6 Debtor argues that Judge Clarkson is biased against her and should not preside over
7 this case. This motion, according to Debtor, was prompted in part by Judge
8 Clarkson's alleged off-handed comments. For example, Judge Clarkson, allegedly
9 remarking upon Debtor's incarceration, compared her to her father, who was
10 apparently also incarcerated (reportedly on a murder or manslaughter conviction).
11 According to Debtor, Judge Clarkson also made dismissive and prejudicial remarks
12 about the merits of her case, noting her *pro se* status, and mentioned the many
13 appeals filed by Debtor. Debtor also alleges that Judge Clarkson refused her a
14 hearing on her inability to comply with the turnover order as well as her request for
15 release from custody in order to be with her terminally ill mother. Additionally,
16 Debtor makes some vague allegations regarding failure of adequate notice of
17 various hearings. Taken together, Debtor argues that she has been denied due
18 process.

19 Further, Debtor argues that Judge Clarkson had an initially undisclosed prior
20 professional relationship with Trustee's attorney, Tinho Mang ("Mang"). Mang,
21 while a law student, served as Judge Clarkson's judicial extern for two summers,
22 most recently in 2017. Judge Clarkson allegedly made complimentary statements
23 directed toward Trustee and his counsel on the record and allowed Trustee extra
24 (and in Debtor's view improper) time to respond to Debtor's *ex parte* motion to stay
25 the compromise between Trustee and one Lucian Rusu. According to Debtor, these
26 circumstances in sum should cause a reasonable person to question Judge
27 Clarkson's impartiality in this case.

2. Legal Standards

Pursuant to 28 U.S.C. § 455(a), a judge must disqualify himself if his impartiality might reasonably be questioned. “It is a general rule that the appearance of partiality is as dangerous as the fact of it.” *U.S. v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980). But in the absence of a legitimate reason to recuse himself, a judge should participate in the cases he is assigned. *U.S. v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008). If it is a close case, the balance tips in favor of recusal. *Id.*

Recusal is appropriate where “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *Blixseth v. Yellowstone Mountain Club, LLC*, 742 F.3d 1215, 1219 (9th Cir. 2014) citing *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008); see also *Holland*, 519 F.3d at 913[section 455(a) asks whether a reasonable person perceives a significant risk that the judge will resolve the case on a basis other than the merits]. The appearance of impropriety can be enough for recusal; actual bias is not necessary. *Id.* citing *Liljeberg v. Health Servs. Acq. Corp.*, 486 U.S. 847, 864-65 (1988); *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993). Appearance is evaluated by looking at how the conduct would be seen by a reasonable person, not someone “hypersensitive or unduly suspicious.” *Id.* citing *Holland*, 519 F.3d at 913. Recusal under section 455(a) requires a fact-driven inquiry and may turn on the subtleties of a specific case. The analysis should not be focused on general comparisons to similar situations, but by an independent examination of the specific facts and circumstances at issue. *Holland*, 519 F.3d at 913.

“Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Liteky v. U.S.*, 510 U.S. 540, 555 (1994). These are almost always proper grounds for appeal, not recusal. *Id.* In *Liteky* the U.S. Supreme Court explained:

[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.

Id. “[E]xpressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display” does not establish bias or partiality. *Id.* at 555-556. Ordinary efforts at courtroom administration, even if short-tempered, remain immune. *Id.* at 556.

Finally, under 28 U.S.C. §455(b)(1), “[a judge] shall also disqualify himself...[w]here he has a personal bias or prejudice concerning a party[.]” There are additional specific provisions of §455(b) that require recusal, but none are factually pertinent to this case.

3. Should Judge Clarkson Be Recused?

So, is this the sort of ‘close case’ which might require recusal as described in *Holland* or is this case closer to the sort of impatience short of grounds for recusal as described in *Liteky*? Below we explore the showing made by Debtor.

As described above, Debtor has raised two distinct grounds for recusing Judge Clarkson: (1) Judge Clarkson’s prior professional relationship with attorney Mang; and (2) Judge Clarkson’s allegedly dismissive off-handed remarks about Debtor and her case, as well as alleged denial of Debtor’s right to due process. Both grounds are unsupported and meritless. Neither ground, on these facts, would cause a reasonable person to believe, or to even suspect, that Judge Clarkson’s impartiality is compromised or that Debtor has been denied due process. Each purported ground is explored below:

A. Was Mang’s Role as Extern Grounds for Recusal, or Even for Requiring an Early Disclosure?

With respect to Mang, Debtor’s position is completely baseless. Debtor incorrectly identifies Mang as Judge Clarkson’s former *law clerk*. But in fact, as noted above, Mang served as a *judicial extern* to Judge Clarkson several years ago, in 2017. At most, Mang served in that position, in aggregate, for a few months as a student. The position of judicial extern is far different from that of a judicial law clerk, but for purposes of this motion, it makes no difference.

Moreover, for Debtor’s edification, a judicial extern, such as Mang was in 2017, typically works most directly with the judge’s law clerk(s), and mainly on rudimentary motions. Judicial externs are often invited to (and do) observe hearings. This would explain the misidentification of externs as “nephews” appearing in Debtor’s reply. On occasion, especially when there is a learning opportunity, a judge will take time out to interface directly with an extern, but most of the time an extern spends in chambers is with fellow externs and the law clerks. By contrast, a judicial law clerk takes on all matters before the court and frequently engages in more in-depth communication with the judge. The level of responsibility a judicial law clerk takes on day to day is usually by orders of magnitude higher than that of a judicial extern. Judicial law clerks also typically spend several years working with a judge, as opposed to the judicial externs who spend mere months within a given chambers. Judicial law clerks are paid employees of the court. Thus, it is wrong of Debtor to allege, particularly without any evidence or personal experience to draw upon, that an extern, such as Mang, is more likely to form a closer relationship with a judge because the extern is not compensated, unlike the judge’s law clerk.

“The existence of a prior relationship—whether a personal or professional connection—between a judge and a lawyer or litigant ‘does not by itself require recusal.’ *See, e.g., In re Menchaca*, 2017 WL 58988036, at *5 (C.D. Cal. 2017) [finding no error where a court denied a motion to disqualify the judge where

1 counsel for appellees was the judge's former extern] [.]” *Golden v. Kipperman (In re*
2 *Golden)*, 2019 U.S. Dist. LEXIS 203484 at *5 (S.D. Cal. 2019).

3 As noted in Trustee’s opposition brief, Debtor has badly mischaracterized the
4 relationship between Mang and Judge Clarkson. Debtor paints a picture of a close-
5 knit personal and perhaps more than professional relationship between Mang and
6 Judge Clarkson. No evidence is offered. But far more realistic is Trustee’s
7 opposition brief, which characterizes the relationship between Mang and Judge
8 Clarkson as certainly familiar, maybe even friendly, but nevertheless professional,
9 observing the appropriate professional distance, much in the same way Judge
10 Clarkson interacts with other members of the Central District bar and bench. Indeed,
11 the role of extern as was occupied by Mang is not dissimilar to professor and student
12 and is not even unusual. Likely every bankruptcy judge in the Central District
13 employs one or more externs in chambers at any given time. If filling the role of
14 extern were to automatically disqualify students from thereafter appearing before
15 their judge, it would be a far less useful educational device and professionally
16 prohibitive to the extern, particularly in a relatively small group such as the
17 bankruptcy bar of the Santa Division of the Central District. Moreover, it appears in
18 Trustee’s opposition that a voluntary (but not mandatory) period of at least one to
19 two years was observed after the externship where he avoided any court appearance
20 in cases before Judge Clarkson to bolster the appearance of propriety yet further;
21 and in any event, this case was not even filed until about four years after the
22 externship, well separating the events and completely dispelling even the smallest
23 hint of impropriety. This fortifies the conclusion that both Judge Clarkson and Mang
24 always observed all proprieties. Debtor has failed to demonstrate any actual or
25 potential conflict of interest warranting Judge Clarkson’s recusal with respect to his
26 prior professional relationship with Mang.

27 Debtor, in her reply, also elaborates on another supposed instance of
28 favoritism toward Mang, and by extension Trustee, allegedly displayed by Judge

1 Clarkson. On March 28, 2023, Debtor filed a handwritten declaration requesting a
2 hearing to argue the defense of impossibility to comply with Judge Clarkson's
3 turnover order. (*See* dkt. #1264). Trustee filed a reply to Debtor's declaration
4 arguing, among other things, that Debtor's declaration was grossly inaccurate in its
5 accounting and was contradicted by evidence in Trustee's possession. (*See* dkt.
6 #1266). Upon review of both Debtor's declaration and Trustee's response, Judge
7 Clarkson denied Debtor's request for a hearing without prejudice. (*See* dkt. #1270).
8 According to Debtor, Judge Clarkson simply agreed with Trustee's opposition
9 without giving Debtor an opportunity to respond. As such, Debtor argues, she
10 remained incarcerated without justification because, in her mind, she had set forth
11 facts tending to show her inability to comply with the turnover order.

12 But reality was different. Judge Clarkson's order denying Debtor's request for
13 a hearing reflects a straightforward, dispassionate, and unbiased analysis. Judge
14 Clarkson noted that statements in the "Accounting" portion of Debtor's declaration
15 "appear to contradict Debtor's prior testimony, under oath." (*See* dkt. #1270, p. 2,
16 lns. 7-8). For example, Judge Clarkson observed, "in §II, she appears to indicate that
17 she has an estimated \$10,000 in her purse and notes that it 'is not accounted for
18 since incarcerated' [Dk. 1264, pg. 9]; however, she previously testified at her
19 judgment debtor exam that she did not have such funds in her purse." (*Id.* at lns. 8-
20 11). Judge Clarkson further observed that the "Accounting" was lacking in detail
21 and was far too broad to constitute an accounting sufficient to purge Debtor's
22 contempt. (*Id.* at lns. 23-25). Recognizing that Debtor was apparently acting without
23 counsel, Judge Clarkson added, "Debtor must provide a detailed breakdown or
24 explanation, containing dates, amounts, and vendors identified by name sufficient to
25 enable Trustee to determine how and where the funds were spent or where they
26 presently are, to enable Trustee to recover any existing balance." (*Id.* at lns. 25-28).
27 Finally, noting that Trustee had been in communication with Debtor's counsel, and
28 understanding that Debtor's counsel required additional time to gather the relevant

1 documentation, Judge Clarkson saw no cause to advance the status conference on
2 the turnover order. (*Id.* at p. 3, lns. 1-10). Again, the court does not detect even a
3 trace of bias toward Trustee in denying Debtor's request for a hearing.

4 Debtor also argues that either Trustee or Judge Clarkson should have
5 disclosed that Mang was an extern for Judge Clarkson in 2017. But no evidence or
6 citation to authority is offered and such disclosure is not a practice that this court has
7 observed in 18 years on the Central District bench, nor is it one likely to be adopted.
8 Employment of student externs is so common and benign that absence of disclosure
9 in any case cannot reasonably be viewed as a basis for suspicion, as Debtor assumes.

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11 **B. Did Judge Clarkson Deny Due Process or Exhibit Antagonism or Bias**
12 **Requiring Recusal?**

13 Regarding Debtor's second basis for Judge Clarkson's recusal, Debtor has
14 again failed to identify any comments or other conduct from which a reasonable
15 person would conclude that Judge Clarkson's impartiality is legitimately open to
16 question, or that Judge Clarkson has denied Debtor her right to due process. Debtor
17 believes certain remarks allegedly made by Judge Clarkson demonstrate that he is
18 biased against Debtor to such an extent as to deny her due process of law under the
19 Fourteenth Amendment, which Debtor argues, warrants Judge Clarkson's recusal
20 pursuant to 28 U.S.C. §455(b)(1). Specifically, aside from the off-handed remarks
21 allegedly made by Judge Clarkson (described above), Debtor also points to Debtor
22 being denied a hearing and opportunity to put on evidence on her inability to comply
23 with the court's turnover order (discussed above), and to being denied release from
24 incarceration to visit with her terminally ill mother.

25 Debtor argues that while incarcerated when she has attempted to calendar a
26 motion, the court takes it off calendar. Debtor also argues that the court has failed to
27 keep her adequately noticed of proceedings in her case. Moreover, Debtor claims
28 that Judge Clarkson had her moved from the Santa Ana jail to a jail in San

1 Bernardino, allegedly to intentionally keep her farther away from her family. But are
2 these allegations well founded? Debtor bears the burden to show some evidence
3 and that appears entirely lacking.

4 In Debtor's declaration, attached to her May 15, 2023, reply, Debtor casually
5 argues that during the January 12, 2023 status conference on the turnover order,
6 Judge Clarkson failed to hold trustee's counsel, D. Edward Hays, in contempt for a
7 vague alleged transgression. Debtor argues that she attempted, in vain, to capture the
8 court's attention so that she could expose Mr. Hays' alleged contempt. The failure to
9 even acknowledge her, Debtor argues, is emblematic of the bias Judge Clarkson
10 allegedly holds against her. This court takes such allegations quite seriously as they
11 go to the foundational integrity of the court itself. As such, this court has taken the
12 time to review the lengthy January 12, 2023, related hearings in this matter in their
13 entirety. Debtor's allegations regarding Mr. Hays, as noted, are vague, and the court,
14 upon review, could not intuit any basis for Debtor's allegation. Quite apparent,
15 however, was Debtor's evasive, combative, and passive-aggressive attitude toward
16 both Mr. Hays and Judge Clarkson throughout the hearing. This demeanor, at least
17 as far as the hearings this court has reviewed (discussed further below), is
18 regrettably Debtor's chosen manner. Throughout the increasingly tense proceeding,
19 Judge Clarkson maintained his composure within the standards articulated in *Liteky*,
20 and displayed admirable compassion for Debtor's precarious situation, but Debtor
21 refused to accept any of the proverbial lifelines presented her and was taken into
22 custody.

23 This court next reviewed the recorded transcript of the January 19, 2023,
24 hearing on the Status Conference re: Turnover of Lapsed Homestead Funds, which
25 occurred approximately one week after Debtor's initial incarceration. According to
26 Debtor, in this hearing, Judge Clarkson displayed his alleged bias against Debtor in
27 several instances, including Judge Clarkson's preference for Debtor to be moved to
28 San Bernardino. This court finds nothing in the recorded transcript to support

1 Debtor's version of events. In fact, as noted above, it was again Debtor who
2 displayed disrespect for the court by repeatedly interrupting Judge Clarkson, and
3 when prompted to give "yes or no" answers to Judge Clarkson's questions, Debtor
4 took on her familiar combative/evasive demeanor, which understandably tried Judge
5 Clarkson's patience. Even after several admonitions against further interruptions,
6 Debtor persisted in her interruptions throughout the hearing. What is crystal clear is
7 that Judge Clarkson displayed no bias against Debtor, and indeed, possibly due to
8 her *pro se* status, attempted to assist her in how she might purge her contempt.
9 Judge Clarkson clearly indicated the steps Debtor must take to purge her contempt,
10 and even suggested that she could (and should) file a motion to assert the defense of
11 impossibility. Judge Clarkson encouraged Debtor and Trustee to discuss potential
12 solutions to help purge her contempt. Judge Clarkson also clearly instructed
13 Trustee's counsel to ensure that Debtor was given adequate notice of all hearings.
14 Quite clearly at worst these allegedly biased comments are of the sort that imperfect
15 human beings, even those elevated to be judicial officers, can be sometimes heard to
16 make, but as held in *Liteky* and similar authority, they do not constitute grounds for
17 recusal. *Liteky* 510 U.S. at 555-56.

18 At a more recent hearing on April 11, 2023, in the related adversary
19 proceeding of *Marshack v. SchoolsFirst Federal Credit Union et al* (adv. # 23-
20 01001), Debtor claims in her motion that Judge Clarkson refused to allow her to
21 make an appearance. This court has also reviewed the recorded transcript of this
22 hearing, and nowhere was Debtor denied an opportunity to appear by Judge
23 Clarkson. In fact, somewhat confusingly, attorney Bruce Boice made a formal
24 appearance on the record on Debtor's behalf. Thus, there does not seem to be
25 anything here either.

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1 **4. Should A Temporary Stay of Proceedings Be Granted?**

2 Debtor also requests a stay of proceedings pending outcome of this recusal
3 motion. However, Debtor's request for stay is ambiguous because it is couched as a
4 request for a stay *pending appeal*. Does that mean an appeal of this motion? Or does
5 Debtor mean her appeal of the first recusal motion? It is unclear why Debtor wants a
6 stay of proceedings and how long such a hypothetical stay would last. Four elements
7 are usually required to obtain a stay. *See Nken v. Holder*, 556 U.S. 418, 425-26
8 (2009) (Under the standard for a stay pending appeal, "a court considers four
9 factors: (1) whether the stay applicant has made a strong showing that he is likely to
10 succeed on the merits; (2) whether the applicant will be irreparably injured absent a
11 stay; (3) whether issuance of the stay will substantially injure the other parties
12 interested in the proceeding; and (4) where the public interest lies.") But Debtor has
13 not shown any likelihood of succeeding on an appeal of either recusal motion nor
14 similarly, has she shown that irreparable harm will be suffered if a temporary stay is
15 not imposed. Debtor has also not shown that other interested parties in this case
16 would not be harmed to a greater degree than Debtor by a delay caused by a stay of
17 proceedings. Finally, Debtor also argues that her fundamental due process right to a
18 fair and impartial court is compromised, and that public policy favors granting a
19 temporary stay. But Debtor has not demonstrated, in any way, that she is the victim
20 of bias by Judge Clarkson nor that she has been denied due process, nor are any
21 persuasive (nor indeed any) grounds for recusal offered. Stripped of the verbiage,
22 what Debtor really seeks here is an early ticket out of jail without purging the
23 contempt which landed her there in the first place. Consequently, there does not
24 appear to be any reason to grant Debtor a stay of proceedings under the rubric of
25 recusal.

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1 **5. Conclusion**

2 In sum, Debtor has not pointed to any instance of judicial misconduct or
3 anything on Judge Clarkson's part that would cause a reasonable person to conclude
4 that Debtor's right to an impartial judicial officer is even potentially compromised.
5 Debtor has not demonstrated that Mang, and by extension Trustee, has gained any
6 unfair advantage because of his prior and very common professional relationship
7 with Judge Clarkson. Debtor has also not identified anything Judge Clarkson has
8 said or done that would objectively cause a reasonable person to question Judge
9 Clarkson's impartiality in this case. What is obvious instead is that Debtor is
10 understandably unhappy with her current situation, but this court sees nothing in this
11 record that suggests that situation in any way is attributable to bias against Debtor
12 that would amount to a basis for recusal. Accordingly, this motion is **DENIED**.
13 These proceedings are returned to Judge Clarkson in their entirety.

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23 Date: May 18, 2023



Theodor C. Albert
United States Bankruptcy Judge